

AMENDED IN SENATE JUNE 14, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2261**

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**Introduced by Assembly Member Roger Hernández**

February 18, 2016

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An act to ~~add Section 98.74 to~~ *amend Section 98.7 of the Labor Code*, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2261, as amended, Roger Hernández. Division of Labor Standards Enforcement: duties.

Existing law authorizes any person who believes that he or she has been discharged or otherwise discriminated against in violation of any law under the jurisdiction of the Labor Commissioner to file a complaint, as specified, with the Division of Labor Standards Enforcement, which is within the Department of Industrial Relations, and requires the commissioner to establish procedures for the investigation of discrimination complaints.

This bill would authorize the division to, with or without receiving a complaint from an employee, commence an ~~investigation, issue a citation, or bring an action against~~ *investigation of* an employer ~~who discharges or otherwise discriminates~~ *that it suspects to have discharged or otherwise discriminated* against an individual in violation of any law under the jurisdiction of the Labor Commissioner.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 98.7 of the Labor Code is amended to*  
2     *read:*

3     98.7. (a) (1) Any person who believes that he or she has been  
4     discharged or otherwise discriminated against in violation of any  
5     law under the jurisdiction of the Labor Commissioner may file a  
6     complaint with the division within six months after the occurrence  
7     of the violation. The six-month period may be extended for good  
8     cause. The complaint shall be investigated by a discrimination  
9     complaint investigator in accordance with this section. The Labor  
10    Commissioner shall establish procedures for the investigation of  
11    discrimination complaints. A summary of the procedures shall be  
12    provided to each complainant and respondent at the time of initial  
13    contact. The Labor Commissioner shall inform complainants  
14    charging a violation of Section 6310 or 6311, at the time of initial  
15    contact, of his or her right to file a separate, concurrent complaint  
16    with the United States Department of Labor within 30 days after  
17    the occurrence of the violation. *Each complaint of unlawful*  
18    *discharge or discrimination shall be assigned to a discrimination*  
19    *complaint investigator who shall prepare and submit an*  
20    *investigation report to the Labor Commissioner based on an*  
21    *investigation of the complaint.*

22    (2) *The division may, with or without receiving a complaint,*  
23    *commence an investigation of an employer that it suspects to have*  
24    *discharged or otherwise discriminated against an individual in*  
25    *violation of any law under the jurisdiction of the Labor*  
26    *Commissioner in accordance with this section. The assigned*  
27    *investigator shall prepare and submit an investigation report to*  
28    *the Labor Commissioner based upon the investigation.*

29    ~~(b) Each complaint of unlawful discharge or discrimination~~  
30    ~~shall be assigned to a discrimination complaint investigator who~~  
31    ~~shall prepare and submit a report to the Labor Commissioner based~~  
32    ~~on an investigation of the complaint. The Labor Commissioner~~  
33    ~~may designate the chief deputy or deputy, the assistant Labor~~  
34    ~~Commissioner, or the chief counsel to receive and~~  
35    ~~review the investigation reports. The investigation~~ *An investigation*  
36    ~~shall include, where if appropriate, interviews with the complainant,~~  
37    ~~respondent, if there is one, the employer, and any witnesses who~~  
38    ~~may have information concerning the alleged a possible violation,~~

1 and a review of any documents that may be relevant to the  
2 ~~disposition of the complaint.~~ *investigation.* The identity of a witness  
3 shall remain confidential unless the identification of the witness  
4 becomes necessary to proceed with the investigation or to prosecute  
5 an action to enforce a determination. The investigation report  
6 submitted to the Labor Commissioner or designee shall include  
7 the statements and documents obtained in the investigation, and  
8 the findings of the investigator concerning whether a violation  
9 occurred. The Labor Commissioner may hold an investigative  
10 hearing ~~whenever if~~ the Labor Commissioner determines, after  
11 review of the investigation report, that a hearing is necessary to  
12 fully establish the facts. In the hearing the investigation report  
13 shall be made a part of the ~~record~~ *record*, and the ~~complainant and~~  
14 ~~respondent~~ *complainant, if there is one, and the employer* shall  
15 have the opportunity to present further evidence. The Labor  
16 Commissioner shall issue, serve, and enforce any necessary  
17 subpoenas.

18 (c) If the Labor Commissioner determines a violation has  
19 occurred, he or she shall notify the ~~complainant and respondent~~  
20 *complainant, if there is one, and the employer* and direct the  
21 ~~respondent~~ *employer* to cease and desist from the violation and  
22 take any action deemed necessary to remedy the violation,  
23 including, ~~where if~~ appropriate, rehiring or reinstatement,  
24 reimbursement of lost wages and interest thereon, payment of  
25 reasonable attorney's fees associated with any hearing held by the  
26 Labor Commissioner ~~in investigating the complaint,~~ *related to the*  
27 *investigation*, and the posting of notices to employees. If the  
28 ~~respondent~~ *employer* does not comply with the order within 10  
29 working days following notification of the Labor Commissioner's  
30 determination, the Labor Commissioner shall bring an action  
31 promptly in an appropriate court against the ~~respondent.~~ *employer.*  
32 If the Labor Commissioner fails to bring an action in court  
33 promptly, ~~the~~ a complainant may bring an action against the Labor  
34 Commissioner in any appropriate court for a writ of mandate to  
35 compel the Labor Commissioner to bring an action in court against  
36 the respondent. If the complainant prevails in his or her action for  
37 a writ, the court shall award the complainant court costs and  
38 reasonable attorney's fees, notwithstanding any other law.  
39 Regardless of any delay in bringing an action in court, the Labor  
40 Commissioner shall not be divested of jurisdiction. In any action,

1 the court may permit the claimant to intervene as a party plaintiff  
2 to the action and shall have jurisdiction, for cause shown, to restrain  
3 the violation and to order all appropriate relief. Appropriate relief  
4 includes, but is not limited to, rehiring or reinstatement of the  
5 complainant, reimbursement of lost wages and interest thereon,  
6 and any other compensation or equitable relief as is appropriate  
7 under the circumstances of the case. The Labor Commissioner  
8 shall petition the court for appropriate temporary relief or  
9 restraining order unless he or she determines good cause exists for  
10 not doing so.

11 (d) (1) If the Labor Commissioner determines no violation has  
12 occurred, he or she shall notify the ~~complainant and respondent~~  
13 *complainant, if there is one, and the employer* and shall dismiss  
14 the ~~complaint~~. *complaint or close the investigation.* The Labor  
15 Commissioner may direct ~~the~~ *a* complainant to pay reasonable  
16 attorney's fees associated with any hearing held by the Labor  
17 Commissioner if the Labor Commissioner finds ~~the~~ *that a*  
18 complaint was frivolous, unreasonable, groundless, and was  
19 brought in bad faith. ~~The~~ *A* complainant may, after notification of  
20 the Labor Commissioner's determination to dismiss a complaint,  
21 bring an action in an appropriate ~~court, which~~ *court that* shall have  
22 jurisdiction to determine whether a violation ~~occurred, and~~  
23 *occurred and*, if so, to restrain the violation and order all  
24 appropriate relief to remedy the violation. Appropriate relief  
25 includes, but is not limited to, rehiring or reinstatement of the  
26 complainant, reimbursement of lost wages and interest thereon,  
27 and other compensation or equitable relief as is appropriate under  
28 the circumstances of the case. ~~When dismissing~~ *If the Labor*  
29 *Commission dismisses* a complaint, the Labor Commissioner shall  
30 advise ~~the~~ *a* complainant of his or her right to bring an action in  
31 an appropriate court if he or she disagrees with the determination  
32 of the Labor Commissioner, and in the case of an alleged violation  
33 of Section 6310 or 6311, to file a complaint against the state  
34 program with the United States Department of Labor.

35 (2) The filing of a timely complaint against the state program  
36 with the United States Department of Labor shall stay the Labor  
37 Commissioner's dismissal of the division complaint until the  
38 United States Secretary of Labor makes a determination regarding  
39 the alleged violation. Within 15 days of receipt of that  
40 determination, the Labor Commissioner shall notify the parties

1 whether he or she will reopen the complaint filed with the division  
2 or whether he or she will reaffirm the dismissal.

3 (e) The Labor Commissioner shall notify the ~~complainant and~~  
4 ~~respondent~~ *complainant, if there is one, and the employer* of his  
5 or her determination under subdivision (c) or paragraph (1) of  
6 subdivision (d), not later than 60 days after the filing of the  
7 ~~complaint~~ *complaint, or commencing the investigation pursuant*  
8 *to paragraph (2) of subdivision (a).* Determinations by the Labor  
9 Commissioner under subdivision (c) or (d) may be appealed by  
10 ~~the a complainant or respondent employer~~ to the Director of  
11 Industrial Relations within 10 days following notification of the  
12 Labor Commissioner's determination. The appeal shall set forth  
13 specifically and in full detail the grounds upon which the appealing  
14 party considers the Labor Commissioner's determination to be  
15 unjust or unlawful, and every issue to be considered by the director.  
16 The director may consider any issue relating to the initial  
17 determination and may modify, affirm, or reverse the Labor  
18 Commissioner's determination. The director's determination shall  
19 be the determination of the Labor Commissioner. The director  
20 shall notify the ~~complainant~~ *complainant, if there is one, and*  
21 ~~respondent employer~~ of his or her determination within 10 days  
22 of receipt of the appeal.

23 (f) The rights and remedies provided by this section do not  
24 preclude an employee from pursuing any other rights and remedies  
25 under any other law.

26 (g) In the enforcement of this section, there is no requirement  
27 that an individual exhaust administrative remedies or procedures.

28 ~~SECTION 1. Section 98.74 is added to the Labor Code,~~  
29 ~~immediately following Section 98.7, to read:~~

30 ~~98.74. In addition to receiving employee complaints pursuant~~  
31 ~~to Section 98.7, the division may, with or without receiving a~~  
32 ~~complaint from an employee, commence an investigation, issue a~~  
33 ~~citation, or bring an action against an employer who discharges or~~  
34 ~~otherwise discriminates against an individual in violation of any~~  
35 ~~law under the jurisdiction of the Labor Commissioner.~~